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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 KIM SENG COMPANY, a California  
12 corporation,

13 Plaintiff,

14 v.

15 J & A IMPORTERS, INC., a  
16 corporation; and DOES 1 through 50,  
17 inclusive,

18 Defendants.  
19

Case No. CV 10-0742 CAS (MANx)

**ORDER RE: STIPULATION  
FOR PROTECTIVE ORDER**

20 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on  
21 the parties' Stipulation Re Protective Order, filed on September 29, 2010, the terms  
22 of the protective order to which the parties have agreed are adopted as a protective  
23 order of this Court, except to the extent, as set forth below, that those terms have  
24 been modified by the Court's amendment of Paragraphs 3, 4, 9, 13, and 22 of the  
25 Stipulation Re Protective Order.

26 The parties are expressly cautioned that the designation of any information,  
27 document, or thing as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS  
28 EYES ONLY" does not, in and of itself, create any entitlement to file such

1 information, document, or thing, in whole or in part, under seal. Accordingly,  
2 reference to this Order or to the parties' designation of any information, document,  
3 or thing as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES  
4 ONLY" is wholly insufficient to warrant a filing under seal.

5  
6 There is a strong presumption that the public has a right of access to judicial  
7 proceedings and records in civil cases. In connection with non-dispositive motions,  
8 good cause must be shown to support a filing under seal. The parties' mere  
9 designation of any information, document, or thing as "CONFIDENTIAL" or  
10 "CONFIDENTIAL - ATTORNEYS EYES ONLY" does not -- without the  
11 submission of competent evidence, in the form of a declaration or declarations,  
12 establishing that the material sought to be filed under seal qualifies as confidential,  
13 privileged, or otherwise protectable -- constitute good cause.

14  
15 Further, if sealing is requested in connection with a dispositive motion or  
16 trial, then compelling reasons, as opposed to good cause, for the sealing must be  
17 shown, and the relief sought shall be narrowly tailored to serve the specific interest  
18 to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th  
19 Cir. 2010). For each item or type of information, document, or thing sought to be  
20 filed or introduced under seal in connection with a dispositive motion or trial, the  
21 party seeking protection must articulate compelling reasons, supported by specific  
22 facts and legal justification, for the requested sealing order. Again, competent  
23 evidence supporting the application to file documents under seal must be provided  
24 by declaration.

25  
26 Any document that is not confidential, privileged, or otherwise protectible in  
27 its entirety will not be filed under seal if the confidential portions can be redacted.  
28 If documents can be redacted, then a redacted version for public viewing, omitting

only the confidential, privileged, or otherwise protectible portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible.

### **TERMS OF STIPULATION RE PROTECTIVE ORDER**

#### 1. Definitions

For purposes of the Order:

"Confidential Information" shall mean trade secrets, know-how, confidential research, proprietary data or any other technical, commercial, business or financial information which is maintained in confidence by a party, whether embodied in physical objects, documents, or the factual knowledge of persons; and which has been designated by the Producing Party as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY" in conformity with this Order.

"Producing Party" or "Designating Party" shall mean the party (and its Outside Counsel) who is producing information to any other party.

"Receiving Party" or "Non-Designating Party" shall mean the party (and its Outside Counsel) who is the recipient of information requested by the Receiving Party and supplied by the Producing Party.

"Attorney" or "Counsel" shall mean the law firms engaged by the parties to represent them in this litigation, namely:

#### Attorneys for Plaintiff

Ernest E. Price  
Arnold E. Sklar  
ROPER, MAJESKI, KOHN & BENTLEY  
515 South Flower Street, Suite 1100  
Los Angeles, CA 90071-2213

#### Attorneys for Defendant

Allen P Lohse  
Miles J. Feldman  
LINER GRODE STEIN YANKELEVITZ  
SUNSHINE REGENSTREIF & TAYLOR  
LLP  
1100 Glendon Avenue, 14<sup>th</sup> Floor  
Los Angeles, CA 90024-3503

Any and every in-house attorney for either party are expressly excluded from the definition of "Attorney" or "Counsel."

1 "Independent Experts" shall mean expert witnesses or consultants engaged  
2 by the parties in preparation for trial and/or for trial. "Independent Experts" does  
3 not include any person who is employed by a party or a competitor of a party.

4 "Confidential - Attorneys Eyes Only" or words of similar import (including  
5 "Restricted Confidential - Attorney's Eyes Only" or "Confidential - Attorneys Eyes  
6 Only" or the like) is a designation which a party may use on documents and things  
7 which in good faith it believes contains or is Confidential Information not normally  
8 available to persons other than the Producing Party, is competitively significant and  
9 commercially sensitive, and hence should be subject to more restrictive  
10 dissemination than other Confidential Information.

11 "Confidential" is a designation for Confidential Information which is other  
12 than "Confidential - Attorneys Eyes Only."

13  
14 2. Each party to this litigation who produces or discloses to the opposing  
15 party, whether through a witness or otherwise, any confidential document or thing  
16 which the Producing Party wishes to be subject to this Protective Order may  
17 designate the same as "CONFIDENTIAL," or "CONFIDENTIAL - ATTORNEYS  
18 EYES ONLY." Such designation shall be made by stamping or affixing thereto a  
19 legend "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY,"  
20 respectively. With respect to Confidential Information which cannot be  
21 conveniently designated in such manner, designation shall be made by informing  
22 the receiving party in writing prior to or concurrently with the disclosure of such  
23 information subject to the provisions of paragraphs 9 and 10 herein. All  
24 Confidential Information designated as provided in this paragraph 1 shall not be  
25 disclosed by the Receiving Party to anyone other than those persons designated  
26 herein and shall be handled in the manner set forth below and, in any event, shall  
27 not be used for any purpose other than in connection with the instant litigation,  
28

1 unless and until such designation is removed by notice from the Producing Party,  
2 agreement of Counsel for the parties, or by Order of the Court. All produced  
3 Confidential Information shall be carefully maintained, subject to the provisions of  
4 paragraph 7 herein, so as to preclude access by persons who are not authorized  
5 herein to receive such information.

6  
7 3. Information designated "CONFIDENTIAL - ATTORNEYS EYES  
8 ONLY" shall be viewed solely by the following persons:

9 (a) Receiving Party's authorized Attorney, including: authorized  
10 Attorney's associates, clerks, paralegal and stenographic personnel;

11 (b) Litigation specialists engaged to assist Counsel in preparation for  
12 discovery and/or trial, including photocopy and translation services, court reporters,  
13 and litigation or trial support services;

14 (c) Independent Experts (subject to paragraph 5); and

15 (d) The Court, court employees, and members of the jury.  
16

17 4. Information designated "CONFIDENTIAL" shall be viewed solely by  
18 the following persons; provided that as to the classes of individuals listed in  
19 subparagraphs (c)-(g) below each such individual who receives such Confidential  
20 Information has read this Protective Order in advance of disclosure and  
21 acknowledged in a written instrument, substantially in the form of Attachment A  
22 hereto, that he or she is fully familiar with the terms of this Protective Order and  
23 agrees to comply with, and be bound by, such Order until modified by further Order  
24 of this Court. A copy of such duly executed, written instrument shall be maintained  
25 by Counsel for the Receiving Party's Counsel.

26 (a) Counsel, including Counsel's associates, paralegal, clerks and  
27 stenographic personnel;  
28

(b) Litigation specialists engaged to assist Counsel in preparation for discovery and/or trial, including photocopy and translation services, court reporters, and litigation or trial support services;

(c) Executives, including in-house attorneys and Directors of a party who are required to participate in policy decisions with reference to this action;

(d) Litigation specialists assigned by any insurer involved in defending this action;

(e) Employees of a party who need to be consulted by Counsel in preparation for discovery or trial of this action;

(f) Independent Experts retained by the parties (subject to paragraph 5);

(g) Clerical employees associated with the individuals enumerated above in (c)-(f); and

(h) The Court, court employees, and members of the jury.

5. With respect to litigation specialists engaged to assist Counsel in preparation for discovery and/or trial, including photocopy and translation services, court reporters, litigation or trial support services, the parties agree that the mere receipt of documentary or other evidence by such specialists will not subject such individuals to deposition unless they are expected to be called as witnesses at trial.

6. Before any disclosure is made to an Independent Expert, such Independent Expert shall first be identified to Counsel for the opposing party and shall acknowledge in a written instrument, substantially in the form of Attachment A hereto, that he or she is fully familiar with the terms of this Protective Order and agrees to comply with, and be bound by such Order until modified by further Order of this Court. The duly executed, written instrument shall be provided to and maintained by Counsel for the Designating Party. At least five (5) business days before any Confidential Information is disclosed to an Independent Expert, the

1 party disclosing such shall notify the Designating Party's Counsel of such proposed  
2 disclosure, by facsimile, including the name and business affiliation of the  
3 Independent Expert. Counsel for the opposing party shall have the right to object  
4 for good cause to such proposed disclosure to the Independent Expert, and should  
5 such objections be made, no disclosure shall be made to such objected-to person  
6 without leave of the Court. Failure of the opposing Counsel to object in writing,  
7 received by the other party within said five (5) business day period, will signify that  
8 the opposing party has no objection to the disclosure and the disclosure may then be  
9 made pursuant to the terms of this Order.

10  
11 7. With respect to documents designated "CONFIDENTIAL" or  
12 "CONFIDENTIAL - ATTORNEYS EYES ONLY," any person indicated on the  
13 face of the document to be its originator, author or a recipient of a copy thereof may  
14 be shown the same. In the case where such person is not presently an employee of  
15 any party to this action, such person shall not be shown such Confidential  
16 Information unless and until that person has read this Protective Order and agreed  
17 in writing, in a form substantially similar to that of Attachment A hereto, to be  
18 bound by its terms.

19  
20 8. All Confidential Information which has been designated as provided in  
21 paragraph 1 by the Producing or Disclosing Party, and any and all reproductions  
22 thereof, shall be retained by the Receiving Party only in the custody of its Counsel,  
23 except that Independent Experts authorized to view such information under the  
24 terms of this Protective Order may retain custody of such copies as are necessary  
25 for their participation in this litigation.

26  
27 9. If any documents designated as provided in paragraph 1, or any  
28 pleadings, motions or other papers disclosing Confidential Information, are to be

1 filed with or delivered to the Court for any purpose, the proposed filing shall be  
2 accompanied with an application to file the papers or confidential portion thereof (if  
3 such portion is segregable) under seal in accordance with the requirements of Rule  
4 79-5 of the Local Civil Rules. Such application shall be directed to the judge to  
5 whom the papers are directed. Where possible, only portions of the filings with the  
6 Court which contain Confidential Information shall be filed under seal. In  
7 connection with any hearing, trial, or proceeding concerning this action before the  
8 Court, Counsel may apply to the Court for *in camera* treatment of any Confidential  
9 Information necessary for disclosure in relation to such hearing, trial or proceeding.  
10 Nothing in this Stipulated Protective Order shall prohibit the admission of  
11 Confidential Information into evidence if such information is otherwise admissible  
12 under the rules of evidence.

13  
14 10. Whenever a deposition taken on behalf of any party involves a  
15 disclosure of Confidential Information:

16 a. The deposition (or portions thereof) may be designated by the affected  
17 party as containing Confidential Information subject to the provisions of this Order.  
18 Such designation shall be made on the deposition record whenever possible, or  
19 upon review of such transcript by counsel for the party or person disclosing any  
20 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS EYES ONLY"  
21 information, but no later than seven (7) days after counsel's receipt of the transcript.  
22 Counsel shall list on a separate piece of paper the number of each page of the  
23 transcript containing "CONFIDENTIAL" Material or "CONFIDENTIAL -  
24 ATTORNEYS EYES ONLY" Material, and mailing copies of the list to counsel for  
25 all Parties so that it may be affixed to the face of the transcript and each copy  
26 thereof. Counsel making a designation after the transcript is prepared shall at  
27 his/her sole expense cause revised transcripts to be prepared and delivered to each  
28 party. Pending such designation by counsel, the entire deposition transcript,



1 including exhibits, shall be deemed "CONFIDENTIAL" Material, unless counsel  
2 during the deposition states that information is "CONFIDENTIAL - ATTORNEYS  
3 EYES ONLY" Material; if no designation is made within seven (7) days after  
4 counsel's receipt of the transcript, the transcript shall be considered not to contain  
5 any "CONFIDENTIAL" Material or "CONFIDENTIAL - ATTORNEYS EYES  
6 ONLY" Material except as designated on the record during the deposition.

7       b. The disclosing party shall have the right to exclude from attendance at  
8 said deposition during such time as Confidential Information is to be disclosed any  
9 person other than the deponent, Counsel (including their staff and associates),  
10 persons authorized by paragraphs 2 or 3 (as applicable) to view the information,  
11 and the Court Reporter, and the failure of such other persons to comply with such a  
12 request shall constitute substantial justification for Counsel to advise the witness  
13 that he or she need not answer a question seeking the revelation of Confidential  
14 Information and each Party waives attendance at depositions during disclosure of  
15 information designated as "CONFIDENTIAL - ATTORNEYS EYES ONLY"; and

16       c. The originals of said deposition transcripts and all copies thereof shall  
17 bear the legend "CONTAINS CONFIDENTIAL INFORMATION SUBJECT TO  
18 PROTECTIVE ORDER" or substantial equivalent, on the cover page and shall bear  
19 the legend "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES  
20 ONLY" or substantial equivalent as appropriate on the specific pages so designated.

21       d. The parties may direct the court reporter at the deposition to keep  
22 confidential and not disclose any testimony that is designated CONFIDENTIAL or  
23 CONFIDENTIAL - ATTORNEYS EYES ONLY.

24  
25       11. Neither the taking of any action in accordance with the provisions of  
26 this Protective Order, nor the failure to object thereto, shall be construed as a  
27 waiver of any claim or defense in this action. At any time after production, the  
28 Producing Party can designate information thereafter to be treated as Confidential

1 Information. In such case, there shall be no liability of the Receiving Party for use  
2 prior to such post-production designation. Moreover, the failure to designate  
3 information in accordance with this Order and the failure to object to a designation  
4 at a given time shall not preclude the filing of a motion at a later date seeking to  
5 impose such designation or seeking to challenge the appropriateness of such  
6 designation. The entry of this Order shall not be construed as a waiver of any right  
7 to object to the furnishing of information in response to discovery or to object to a  
8 requested inspection of documents or things, and, except as expressly provided,  
9 shall not relieve any party of the obligation of producing information in the course  
10 of discovery. The fact that a party has designated information as  
11 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY" in this  
12 action shall have no evidentiary effect in this action and may not be commented  
13 upon by any party for any purpose (except in a motion pursuant to Paragraph 12) in  
14 papers filed herein, at hearings or before the jury except to advise that the  
15 information is then designated as "CONFIDENTIAL" or "CONFIDENTIAL -  
16 ATTORNEYS EYES ONLY."

17 In the case of physical inspections or on site visits which occur by court  
18 order, discovery request, or the agreement or stipulation of counsel, the Party  
19 allowing the inspection may designate in advance, or contemporaneously with the  
20 inspection, items and areas of the plant, office, or warehouse which contain  
21 CONFIDENTIAL, or CONFIDENTIAL - ATTORNEYS EYES ONLY materials.  
22 In such areas, the film, video tape, photograph, record or other such medium  
23 recording the area shall be maintained as CONFIDENTIAL or CONFIDENTIAL -  
24 ATTORNEYS EYES ONLY (in accordance with the designation of the area).

25  
26 12. In the event anyone shall violate or threaten to violate the terms of this  
27 Order, the parties agree that the aggrieved party may immediately apply to obtain  
28 injunctive relief against any such person, and in the event the aggrieved party shall

1 do so, the respondent person, subject to the provisions of this Order, shall not  
2 employ as a defense thereto the claim that the aggrieved party possesses an  
3 adequate remedy at law. The parties and any other person subject to the terms of  
4 this Order agree that this Court shall retain jurisdiction over it and them for the  
5 purpose of enforcing or modifying this Order, notwithstanding any subsequent  
6 disposition of this action.

7  
8 13. A party receiving a document or thing which has been designated  
9 pursuant to paragraph 1 by the Producing Party, may move the Court to remove or  
10 change such designation. Grounds for removal include, but are not necessarily  
11 limited to the following:

- 12 • the information provided by the document or thing is not Confidential  
13 because it is available in the public domain through no fault of the  
14 Receiving Party;
- 15 • the information provided by the document or thing is not Confidential  
16 because it was previously independently known to the Receiving  
17 Party;
- 18 • the information provided by the document or thing is not Confidential  
19 because it was received from a third party who lawfully possessed  
20 such information and had the unrestricted right to disclose such  
21 information and without breach of any relationship of confidentiality;  
22 or,
- 23 • the information provided by the document or thing is not Confidential  
24 because it was information developed from independent sources  
25 without use of the designated Confidential Information.
- 26 • Grounds for change in designation from a more restrictive to a less  
27 restrictive category include failure of the information to reasonably  
28 comply with the criteria set forth in the Definitions.

1        Meet and Confer: A Party that elects to initiate a challenge to a Producing  
2 Party's confidentiality designation must do so in good faith and must begin the  
3 process by conferring directly (including by voice dialogue) with counsel for the  
4 Producing Party. In conferring, the challenging Party must explain the basis for its  
5 belief that the confidentiality designation was not proper and must give the  
6 Producing Party an opportunity to review the designated material, to reconsider the  
7 circumstances and, if no change in designation is offered, to explain the basis for  
8 the chosen designation. A challenging Party may proceed to the next stage of the  
9 challenge process only if it has engaged in this meet and confer process first.

10        Court Intervention: A Party that elects to press a challenge to a  
11 confidentiality designation after considering the justification offered by the  
12 Producing Party may file and serve a motion that identifies the challenged material  
13 and sets forth in detail the basis for the challenge. Each such motion must be  
14 accompanied by a competent declaration that affirms that the movant has complied  
15 with the meet and confer requirements imposed in the preceding paragraph and that  
16 sets forth with specificity the justification for the confidentiality designation that  
17 was given by the Producing Party in the meet and confer dialogue.

18        The burden of persuasion in any such challenge proceeding shall be on the  
19 Producing/Designating Party. Until this Court rules on the challenge, all parties  
20 shall continue to afford the material in question the level of protection to which it is  
21 entitled under the Producing/Designating Party's designation.

22  
23        14. Immediately after entry of final judgment including appeals, or of  
24 dismissal in connection with this action, all documents and things, including  
25 transcripts of depositions or of trial, together with all copies thereof, which have  
26 been designated as, or which contain information which has been designated as,  
27 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY" shall be  
28 returned to the Designating Party. In lieu of returning such designated materials as

1 provided above, Counsel for the Receiving Party may certify in writing to the  
2 Counsel for the Designating Party that the materials have been destroyed.

3  
4 15. Nothing in the foregoing provisions of this Protective Order shall be  
5 deemed to preclude any party from seeking and obtaining, on an appropriate  
6 showing, additional protection with respect to the dissemination of Confidential  
7 Information or seeking and obtaining relief from this Protective Order.

8  
9 16. Nothing in the foregoing provisions of this Stipulated Protective Order  
10 shall be deemed to preclude any party from disclosing or using, in any manner or  
11 for any purpose, any information or documents from the party's own file which the  
12 party itself has designated as CONFIDENTIAL or CONFIDENTIAL -  
13 ATTORNEYS EYES ONLY.

14  
15 17. This Protective Order may be amended by agreement of the parties,  
16 subject to the approval of the Court.

17  
18 18. This Protective Order shall inure to the benefit of and be enforceable  
19 by third parties with respect to documents and information produced by them in the  
20 course of pretrial discovery, and designated by them as "CONFIDENTIAL" or  
21 "CONFIDENTIAL - ATTORNEYS EYES ONLY" in the manner provided herein.  
22 Documents and information, including deposition testimony, received from a third  
23 party pursuant to a subpoena or equivalent process in foreign jurisdictions, which  
24 would otherwise legitimately be considered Confidential Information if produced  
25 by a party may be designated as such by the affected party. Such designation shall  
26 be made in a writing to each other party, or on an official record, which identifies  
27 specifically the document(s), information, or testimony to be designated, whether  
28 the designation is CONFIDENTIAL or CONFIDENTIAL - ATTORNEYS EYES

1 ONLY. Third party documents, information, or testimony so designated under this  
2 paragraph shall in all other respects be treated under the provisions of this  
3 Stipulated Protective Order as though produced by a party.  
4

5 19. If a party or person in possession of Confidential Information as  
6 provided herein receives a subpoena from a non-party seeking production or other  
7 disclosure of Confidential Information which said party or person received from the  
8 Designating Party, then telephonic and written notice shall immediately be given to  
9 Counsel for the Designating Party of the subpoena, identifying the Confidential  
10 Information sought and arranging for transmission of a copy of the subpoena to said  
11 Outside Counsel. Where possible, at least ten (10) business days' notice shall be  
12 given before production or other disclosure is made pursuant to the subpoena. In  
13 no event, absent Court Order, shall production or disclosure be made before written  
14 notice is given. A party thus subpoenaed shall take all appropriate measures timely  
15 to advise any relevant Court or tribunal of the terms of this Stipulated Protective  
16 Order.  
17

18 20. If Confidential Information is disclosed to any person other than in a  
19 manner authorized by this Stipulated Protective Order, the party responsible for  
20 such disclosure shall upon discovery of the disclosure immediately inform the party  
21 whose information is disclosed of all facts pertinent thereto, which after due  
22 diligence and prompt investigation are known to the responsible party, including  
23 the name, address and employer of the person to whom the disclosure was made,  
24 and shall make reasonable efforts to prevent further disclosure by each  
25 unauthorized person who has received such information.  
26

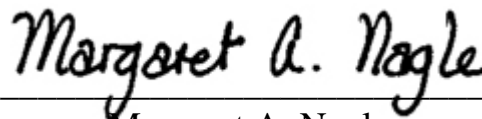
27 21. Nothing herein shall bar or otherwise restrict Counsel from rendering  
28 advice to his or her client with respect to this action, and in the course thereof, from

1 generally relying upon Confidential Information. In rendering such advice,  
2 Counsel shall not disclose the specific content of Confidential Information.

3  
4 22. The limitations and restrictions in this Protective Order shall not apply  
5 to information, documents, or things introduced into evidence at trial, absent a  
6 further Court order.

7  
8 **IT IS SO ORDERED.**

9  
10 DATED: October 6, 2010



\_\_\_\_\_  
Margaret A. Nagle  
United States Magistrate Judge

**EXHIBIT A**

**AGREEMENT TO BE BOUND BY TERMS OF THE PROTECTIVE ORDER**

I, \_\_\_\_\_, have received a copy of the Stipulation for Protective Order entered in the action entitled KIM SENG COMPANY v. J & A IMPORTERS, INC. (United States District Court, Central District of California, County of Los Angeles, Case No. CV 10-0742 CAS (MANx)). I have carefully read and understand the provisions of the Protective Order. I agree that I will comply with all provisions of the Protective Order and will use any “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” information only for purposes of this action. At the end of this litigation or my involvement in this litigation, whichever occurs first, I will either destroy or return to counsel for the party by whom I am employed or retained all such “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” documents or information that comes into my possession.

Dated: \_\_\_\_\_